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# SANCTIONS AND THE SETTLEMENT OF DISPUTES: FOCUS ON THE IAEA<sup>†</sup>

STEPHEN GOROVE\*

INTERNATIONAL CONTROL in the field of peaceful uses of atomic energy constitutes a large and complex task.<sup>1</sup> On the global level, the International Atomic Energy Agency (IAEA) has, for some time now, been assuming an increasing role in this endeavor<sup>2</sup> and is now looking forward to an even wider application of international inspection and veri-

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<sup>†</sup> This article is the outgrowth of a study and on-the-spot survey sponsored by the American Society of International Law, involving international procedures and techniques developed to control the peaceful uses of atomic energy. The author gratefully acknowledges the generous support and counsel obtained from the Society and its Advisory Group as well as the assistance received through personal interviews with officials of the International Atomic Energy Agency. This article expresses the views of the author.

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<sup>1</sup> For concise, comparative reviews of the various international systems exercising control over the peaceful uses of atomic energy, see Gorove, *Controls over Atoms-for-Peace: Some Facts and Implications for Nuclear Disarmament*, 27 LA. L. REV. 36 (1966); Hall, *Atoms For Peace, or War*, 43 FOREIGN AFFAIRS 602 (1965); Wolff, *The Legal and Factual Problems of International Security Control in the Field of Nuclear Energy*, 4 DIRITTO ED ECONOMIA NUCLEARE 179 (1962).

<sup>2</sup> On the enhanced role, perspectives and expectations of the IAEA, see Gorove, *Maintaining Order Through On-Site Inspection*, 18 W. RES. L. REV. 1525 (1967); Gorove, *Transferring U. S. Bilateral Safeguards to the International Atomic Energy Agency: the "Umbrella" Agreements*, 6 DUQ. U.L. REV. 1 (1967). For a general discussion of IAEA control procedures, see Szasz, *Legal and Administrative Problems Arising from the Implementation of International Atomic Energy Safeguards*, in PROGRESS IN NUCLEAR ENERGY 116 (Series X, Law and Administration, vol. 4, at 116 *et seq.* 1966).

fication procedures following the conclusion of the Nonproliferation Treaty.<sup>3</sup>

One of the major control responsibilities of the IAEA is to assure that nuclear materials, facilities and equipment which have been pledged exclusively for peaceful purposes will not be diverted to military uses.<sup>4</sup> Perhaps the most frequently encountered questions in connection with this assurance relate to enforcement procedures or sanctions and the settlement of disputes. What happens in the case of non-compliance by a state with its assumed pledge not to use certain designated materials, facilities and equipment for military purposes? What if there is some other noncompliance with accepted control procedures such as opposition to international inspection of a nuclear plant or facility which by agreement has been placed under Agency (IAEA) safeguards?

<sup>3</sup> Under ¶ I of art. VI of the Nonproliferation Treaty, reproduced in 59 DEP'T STATE BULL. 9 (1968), each nonnuclear weapon state party to the Treaty undertakes to accept IAEA safeguards for the exclusive purpose of verifying the fulfillment of its obligations assumed under the Treaty with a view toward preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. For analyses of the Treaty provisions and its implications, see M. WILLRICH, *NONPROLIFERATION TREATY: FRAMEWORK FOR NUCLEAR ARMS CONTROL* (1969); Bunn, *Nuclear Non-proliferation Treaty*, 1968 WIS. L. REV. 766.

<sup>4</sup> The IAEA is charged by its statute to establish and administer a system of safeguards to ensure that special fissionable and other materials, services, equipment, facilities and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose. See INT'L ATOMIC ENERGY AGENCY STATUTE [hereinafter IAEA Stat., art. III. A. 4].

Who is liable for violations of individual or institutional interests such as damage or injury resulting from an accident occurring in the course of a nuclear inspection? How are disagreements and disputes to be handled in the delicate area of atomic energy where the peaceful and military applications are not too far apart?<sup>5</sup> The ensuing discussion attempts to give some answers to these questions. Specifically, it focuses upon the IAEA sanctions in case of noncompliance and other encroachments upon individual or institutional interests and follows with an analysis of the Agency's procedures for settlement of disputes.

#### NONCOMPLIANCE

Noncompliance, whether or not it involves diversion or other violation of accepted control procedures, may arise out of actions by others or by the IAEA itself.<sup>6</sup> In the first instance, the statute of the

<sup>5</sup> On the problem of differentiating atoms-for-peace from atoms-for-war, see Gorove, *Distinguishing "Peaceful" from "Military" Uses of Atomic Energy: Some Facts and Considerations*, 30 OHIO ST. L. J. 495 (1969).

<sup>6</sup> Under the Agency's old safeguards system, incorporated in the Safeguards Document of 1961 (Doc. IAEA/INFCIRC/26, ¶ 17), "diversion" was defined as

the use by a recipient State of fissionable or other materials, facilities or equipment supplied by the Agency so as to further any military purpose or in violation of any other condition prescribed in the agreement between the Agency and the State concerning the use of such materials, facilities or equipment.

In the revised Safeguards Document of 1965 (Doc. IAEA/INFCIRC/66), there is no definition of diversion but noncompliance would include any violation of accepted control procedures.

IAEA makes it the primary responsibility of Agency inspectors to determine the existence of a violation.<sup>7</sup> The inspectors are required to report any noncompliance to the Director General of the Agency who, in turn, must forward the report to the IAEA Board of Governors.<sup>8</sup> The Board exercises a power of review over the findings of the inspectors, since it is required to call upon the recipient state or states "to remedy forthwith" any noncompliance *only* if it finds that such has occurred. In that case the Board is also required to report the noncompliance to all members of the IAEA and to the Security Council and General Assembly of the United Nations. The two latter bodies can take whatever action is open to them under the U. N. Charter, including the use of force. However, if corrective action is not taken within a reasonable time, the Board may directly curtail or suspend any agency assistance which is being given and call for the return of materials and equipment made available to the recipient member. The return, however, is to be affected by

the state or states concerned and the inspectors have no right to remove materials in the event of noncompliance. Additionally, the Agency may suspend any non-complying member from the exercise of the privileges and rights of membership.<sup>9</sup>

Many Agency agreements contain additional provisions to the effect that, in the event of failure by the noncomplying state to take fully corrective action within a reasonable time, the Board may suspend the Agency's responsibility to apply safeguards originally agreed upon for a period which the Board determines is not conducive to effective application.<sup>10</sup>

The staff of inspectors also has the statutory responsibility to examine all operations conducted by the Agency itself in order to determine, *inter alia*, whether the Agency is taking adequate measures to prevent the source and special fissionable materials in its custody or used or pro-

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<sup>7</sup> The IAEA is authorized by its statute to send into the territory of the recipient state or states inspectors, designated by the Agency after consultation with the state or states concerned, who shall have access at all times to all places, data and any person who, by reason of his occupation, deals with materials, equipment, or facilities which are required by the statute to be safeguarded as necessary to account for source and special fissionable materials supplied and fissionable products, and to determine whether there is compliance with the undertaking against use in furtherance of any military purpose, and with any other conditions prescribed in the agreement between the Agency and the state or states concerned. IAEA Stat., art. XII.A.6.

<sup>8</sup> *Id.* art. XII.C.

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<sup>9</sup> *Id.* See also *id.* art. XII.A.7. During the negotiations relating to the drafting of the IAEA statute, Poland unsuccessfully proposed that the Board's decision for the suspension of assistance and return of materials be made by a two-thirds majority vote. Docs. IAEA/CS/art. XII/amend. 3 (1956); IAEA/CS/OR. 38, at 32-35 (1956). It may be noted that art. XII.C. of the statute uses the phrase "return" of materials, which implies return to the supplier (IAEA or a state or states), whereas art. XII.A.7 states that the Agency is authorized to "withdraw" any materials. No occasion has yet arisen to dispel this apparent discrepancy, but project or safeguards agreements normally include reference to one or the other article.

<sup>10</sup> Trilateral Agreement with the Agency, Japan, and the United States, Sept. 23, 1963, art. II, § 14(a), [1963] 2 U.S.T. 1265, T.I.A.S. No. 5429; Agency Agreement with the United States, June 15, 1964, art. II, § 13(a), [1964] 2 U.S.T. 1456, T.I.A.S. No. 5621.

duced in its own operations from being used in furtherance of any military purpose. In case of noncompliance, the Agency is obligated to take remedial action forthwith to correct any failure to take adequate measures.<sup>11</sup>

#### VIOLATIONS OF INDIVIDUAL AND INSTITUTIONAL INTERESTS

Since the Agency engages in a number of activities through its inspectors and other officials which may result in injury to individuals or damage to individual or institutional interests, a brief consideration of the legal framework of protective sanctions seems appropriate.

##### *Liability for Injury or Damage In Absence of International Agreement*

Generally, in the absence of an international agreement governing liability, the Agency and its officials (including inspectors) would be liable for injury or damage caused by the officials through negligence or willful misconduct in connection with their duties. In this respect, it seems convenient to distinguish between damage resulting from unauthorized disclosure of industrial secrets and other confidential information, and damage or injury arising from other activities.

##### A. Unauthorized Disclosure of Industrial Secrets and Other Confidential Information

The unauthorized disclosure of industrial secrets and other confidential information by an official (inspector) of the

Agency who has acquired such information in the course of his duty may make the Agency as well as the official liable for damages to the owner of such information. The existence and extent of such liability would depend upon the circumstances of the disclosure and the nature of damages suffered. More specifically, it would be necessary to determine whether the official knew or had reason to believe that the information was confidential and whether the disclosure related to information which the owner had intended to keep secret or for which he had intended to acquire a patent.

The ad hoc committee of the Agency's inspectors did not include in their document any provision concerning the inspector's obligation not to disclose any industrial secrets or other confidential information he might learn by virtue of his official duties. The committee noted, however, that such a provision had already been included in the Safeguards Document and, furthermore, that all Agency officials were, in any case, bound by the statutory stipulations as well as by the Staff Regulations.<sup>12</sup> Under these various restrictions, the Agency staff, which includes inspectors, is under an obligation

<sup>11</sup> IAEA Stat. Art. XII.B.

<sup>12</sup> *Id.* art. VII.F; Docs. IAEA/GC(V)/INF/39 (Inspectors Document, 1961); IAEA/INFCIRC/6. Rev. 1, Staff Regulation 1.06 (1961); IAEA/INFCIRC/26 at 6 (Safeguards Document, 1961). *See also* Doc. IAEA/INFCIRC/66, ¶ 13 (revised Safeguards Document, 1965) and the relevant provisions of various safeguards agreements. For details on the latter, see Gorove, *Transferring U.S. Bilateral Safeguards to the International Atomic Energy Agency: The "Umbrella" Agreements*, 6 DUQ. U.L. REV. 1, 12 (1967).

not to disclose any industrial secret or other confidential information encountered due to their position, except to the Director General and other staff members authorized to have such information for the discharge of their official duties. Agency inspectors are expected to be especially cognizant of this obligation because any violation may result in disciplinary measures against them, including summary dismissal. Moreover, the Agency may, in an appropriate case and under national laws for the protection of professional secrets, bring suit in the courts of a member state against the official or ex-official in order to prevent any unauthorized disclosure or to recover damages.

#### B. Other Activities: Nonnuclear and Nuclear Incidents

In addition to liability resulting from unauthorized disclosure of industrial secrets and other confidential information, the Agency and its officials may also incur liability from other activities, such as the normal nonnuclear accidents caused by an inspector or other Agency official at headquarters or elsewhere, and nuclear accidents resulting from inspection, test-taking, measurements, storage, and transportation of radioactive samples, whenever such activities are carried out by the inspectors themselves. Inasmuch as Agency inspectors would normally be instructed to leave such activities (insofar as this may be possible without prejudicing the effectiveness of the inspection) to the staff of the inspected facility, and since only small amounts of nuclear materials would be involved, these types of accidents would most likely be of small magnitude.

Liability might also arise in connection with losses or expenses incurred as a result of compliance with unreasonable operational requests by an inspector, such as a request for an unscheduled inventory necessitating a shutdown.<sup>13</sup> If a state considers that the demands of an inspector are unreasonable and that compliance would involve a substantial expenditure, it can, at any time, appeal to the Board for a decision on the matter. This procedure, and the further possible recourse to any arbitral or judicial settlement agreed upon, may, however, be undertaken only by the respective state and not independently by the enterprises or the individuals whose interests are adversely affected, unless the Agency agrees to such procedure.

Normally, liability would not be expected to arise in connection with major operational accidents occurring in an inspected facility as a result of compliance with unreasonable operational orders by an inspector, since the latter has no authority to make such orders (and this is usually made known to both the inspector and the inspected facility), but can only request that tests or operations be executed

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<sup>13</sup> This case is not very likely to occur inasmuch as, subject to the requirement that they effectively discharge their functions, the visits and activities of Agency inspectors must be so arranged as to assure the minimum possible inconvenience to the state and disturbance to the facilities inspected. Doc. IAEA/GC(V)/INF/39, ¶¶ 7 & 8 (1961). See also Gorove, *Maintaining Order Through On-Site Inspection: Focus on the IAEA*, 18 W. RES. L. REV. 1536, 1565 (1967). The revised Safeguards Document provides that a request for shutdown may only be made by the Board's decision. Doc. IAEA/INFCIRC/66, ¶ 11 (1965).

by and with the approval of the persons in charge of the facility who would then be responsible for the safe execution of such.<sup>14</sup>

#### *Liability Under International Agreement*

Under the Agency-sponsored Convention on Civil Liability for Nuclear Damage, which was signed in Vienna on May 21, 1963, liability for nuclear incidents would fall upon the operator of the facility where the accident occurred or from which the nuclear material, if it is of a type specified in the Convention, was removed.<sup>15</sup> The operator of the facility normally would have no recourse against the Agency for damages paid to third parties and would have a right of recourse against an inspector personally only if he caused the accident with specific intent.<sup>16</sup>

Apart from the Convention, several Agency agreements contain stipulations regarding liability. For example, the agreement with Norway stipulates that neither the Agency nor any person acting on its behalf is to bear any liability in connection with the joint program or the reactor facility and that Norway is to hold them free from any such liability.<sup>17</sup>

The agreement with the United States of June 1, 1962 (now expired), provided that the organization would indemnify the United States, its officials, agents, employees, contractors and others claiming

through it, for any injury or damage caused by the Agency or its inspectors. However, it also noted that this provision did not deprive the Agency or its inspectors of any rights under the U.S. Atomic Energy Act of 1954, and that the reactor facilities were covered by indemnification agreements pursuant to that Act.<sup>18</sup>

#### PROCEDURES FOR SETTLEMENT OF DISPUTES

##### *Provisions*

The IAEA statute envisages a special procedure for the settlement of disputes. Under article XVII, any question or dispute concerning the interpretation or application of the statute which is not settled by negotiation is to be referred to the International Court of Justice unless the parties concerned agree on another mode of settlement. While the IAEA may not be party to a dispute<sup>19</sup> before the International Court of Justice, the Agency's General Conference and its Board are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the Agency's activities.<sup>20</sup>

<sup>14</sup> Doc. IAEA/INFCIRC/66, ¶ 48 (1965).

<sup>15</sup> Vienna Convention on Civil Liability for Nuclear Damage, May 21, 1963, art. IV, 1, IAEA, Legislative Series No. 4, at 3 (1966).

<sup>16</sup> *Id.* art. IV, 2.

<sup>17</sup> Art. IX, § 21. Doc. IAEA/INFCIRC/29/Mod. 1 (1961).

<sup>18</sup> Art. VI, § 14 [1962] 1 U.S.T. 415, T.I.A.S. No. 5002.

<sup>19</sup> A genuine dispute between the Agency and a state is not considered as having arisen unless the Board or the General Conference is involved on the Agency's part. Thus, any other disagreement at a lower level (involving only the Agency's inspectors, its Inspector General, or its Director General) would not constitute a genuine dispute.

<sup>20</sup> In November 1957, when the General As-

Furthermore, by the terms of article XI.F.6. of the statute, appropriate provisions must be included in all IAEA project agreements concerning the settlement of disputes. While this requirement is limited to project agreements, other types of safeguards agreements routinely include such stipulations to the effect that any dispute with respect to the interpretation or application of the relevant agreement which is not settled by negotiation or as may otherwise be agreed, is, at the request of either party, to be submitted to an arbitral tribunal. The two parties involved each designate one arbitrator and the two arbitrators so named appoint a third, who acts as the chairman. If, within 30 days of the request for arbitration, either party has not designated an arbitrator, either party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure applies if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been appointed. A majority of the members of the arbitral tribunal constitutes a quorum, and decisions are made by a majority vote. The procedures of the arbitration are fixed by the tribunal, whose decisions (including all rulings concerning procedure, jurisdiction, and division of the

expenses of arbitration between the parties) are binding on all parties.<sup>21</sup>

To further develop this subject, the trilateral agreement among the Agency, Japan, and the United States provides that, should the dispute involve all three parties to the agreement, each party designates one arbitrator and the three will, by unanimous agreement, appoint a fourth arbitrator, who will be the chairman, plus a fifth arbitrator. If however, within 30 days of the request for arbitration, a party has not designated an arbitrator, either of the remaining parties can request the President of the International Court of Justice to appoint an arbitrator. The same procedure is applied if, within 30 days of the designation of the three arbitrators, the chairman or the fifth arbitrator has not been appointed.<sup>22</sup> There is also a provision for interim decisions and orders and a stipulation that all decisions, rulings, and

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sembly approved the relationship agreement with the Agency, it also authorized the latter to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the relationship between the Agency and the United Nations or any specialized agency. Docs. IAEA/GC(II)/INF/12 (1958); IAEA/GC/II/39 at 12 (1958); G.A. Res. 1146, 12 U.N.

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<sup>21</sup> See, e.g., Agency agreements with: the Congo (Leopoldville, now Kinshasa), art. X, § 12, Doc. IAEA/INFCIRC/37 (1962); Finland, art. VIII. 1, Doc. IAEA/INFCIRC/24 (1960); Norway, art. XI, § 24, Doc. IAEA/INFCIRC/Mod. 1 (1961); Pakistan, art. X, § 13, Doc. IAEA/INFCIRC/34 (1962); United States, June 1, 1962, art. VIII, § 17 (1962) 1 U.S.T. 415, T.I.A.S. No. 5002; Yugoslavia, art. VII, § 11, Doc. IAEA/INFCIRC/32 (1961); cf. art. V of the Agency Agreement with Japan, Doc. IAEA/INFCIRC/3, II (1959), which provides that the President of the International Court of Justice shall appoint the third member of the arbitral tribunal if the first two members do not agree on the designation of the third member within three months after the making of the application.

<sup>22</sup> Article VI, § 20 of the Trilateral Agreement with the Agency, Japan, and the United States, Sept. 23, 1963, [1963] 2 U.S.T. 1265, T.I.A.S. No. 5429. For details, see Gorove, *supra* note 12, at 11.



orders of the tribunal are to be implemented by the parties in accordance with their respective constitutional procedures.<sup>23</sup>

In case of any dispute involving the application of an agreement regarding Agency inspectors, safeguards against diversion, or changes in the project, the decisions of the Board are, if they so provide, to be given immediate effect by the respective country, pending the conclusion of any consultation, negotiation, or arbitration that may be or may have been invoked with regard to the dispute.<sup>24</sup>

All disputes arising out of the interpretation or application of the Agreement on the Privileges and Immunities of the Agency are to be referred to the International Court of Justice unless the parties (states) agree on another mode of settlement. If a difference arises between the Agency and a member and they do not agree on any other mode of settlement, a request is made for an advisory opinion on any relevant legal question. The opinion given by the court must be accepted by the parties as decisive.<sup>25</sup>

<sup>23</sup> See art. VI, § 20; Agency Agreement with the United States, June 15, 1964, art. VI, § 18 [1964] 2 U.S.T. 1456, T.I.A.S. No. 5621. For details, see Gorove, *supra* note 12, at 11.

<sup>24</sup> See cited Agency agreements, notes 21 & 22, *supra*, with: the Congo, art. X, § 13; Pakistan, art. X, § 14; *cf.* cited Agency agreements with: Finland, art. VIII, 2; Japan and the United States, art. VI, § 21; Norway, art. XI, § 25; United States, June 1, 1962, art. VIII, § 18; United States, June 15, 1964, art. VI, § 19; Yugoslavia, art. VII, § 12.

<sup>25</sup> Agreement on the Privileges and Immunities of the IAEA, art. X, § 34, Doc. IAEA/INFCIRC/9/ Rev. 1 (1959). For details, see Gorove, *Privileges and Immunities of International Atomic Inspectors*, 38 FORDHAM L. REV. 497 (1970).

### *Disputes and Procedure Against the Agency*

If a state decides that it has a claim against the Agency based on any action or omission of an Agency official (inspector), it can demand reparation from the organization and, if unsuccessful, then invoke the procedure for settlement of disputes provided in the relevant agreement.

When any other party (such as the operator of an inspected facility, if such is not the state itself, or any other third party not contractually related to the Agency) presents a claim against the Agency which the latter is not prepared to satisfy directly, the organization can require the claimant to advance it through his state. The Agency could also waive its own immunity in the appropriate national court or propose some ad hoc method of adjudicating its liability, such as by arbitration.<sup>26</sup>

While the Agency may seek reimbursement from the inspector concerned, in most cases it could not expect to have any major damages covered in this way. Therefore the Agency normally carries insurance to cover itself for the inspector's activities.

<sup>26</sup> The Agency does not have an internal tribunal like the one established by the Security Control Convention of December 20, 1957 of the Organization for European Economic Cooperation (now known as the Organization of Economic Cooperation and Development). See Gorove, *The Inspection and Control System of the European Nuclear Energy Agency*, 7 VA. J. INT'L L. 68, 82 (1967). It may also be noted that the jurisdiction of the Administrative Tribunal of the International Labor Organization (ILO) is limited to disputes brought by ILO officials. See Statute of the Administrative Tribunal of the ILO, art. II, ¶¶ 4 & 5.

*Disputes and Procedure Against the Inspected State*

If Agency property is damaged during the course of an inspection, the Agency may advance its claim against the state or the facility in which the damage occurred. If the claim is not settled by negotiation, the Agency may resort to the disputes procedure provided for in the relevant agreement.

If an Agency inspector suffers injury in the course of an inspection, he may bring a claim against the state or the facility in which the injury occurred. If he is unable to obtain satisfactory compensation, he may, in addition to obtaining the compensation due him for injuries incurred in the course of service, request the Agency to espouse his claim. The Agency, acting in its own behalf or on behalf of its inspector, may, if necessary, invoke the disputes stipulations incorporated into the appropriate agreement.<sup>27</sup>

## ASSESSMENT

The preceding analysis of IAEA sanctions and the procedures for the settlement of disputes lends itself to a number

of observations. The IAEA, like other international organizations, has extremely limited authority to deal with noncompliance. Having no physical force at its disposal to support its authority, it must necessarily rely upon the cooperation of the member states to assure observance of statutory obligations. When faced with a clear-cut diversion or other substantial violation, the most it can do is request the return of the materials and equipment from the noncomplying recipient state and report the violation to the United Nations, an organization proven to be largely ineffective as an instrument for the legitimate use of force. In view of these considerations, one may wonder how the IAEA could have expected to accomplish, and indeed could have accomplished, its functions without major disputes or significant incidents of noncompliance which, according to all indications, appears to be the case. The reason seems to lie first of all in the fact that IAEA safeguards apply only to certain designated materials, facilities and equipment which have been voluntarily earmarked for peaceful purposes, and do not apply to atoms destined for military use, such as nuclear weapons. Thus the benefits, if any, to be gained from diversion would be negligible inasmuch as countries may have their own military programs not subject to IAEA controls. A more formidable test for the effectiveness of Agency sanctions may come with the eventual policing of the Nonproliferation Treaty and the Treaty for the Prohibition of Nuclear Weapons in Latin America.<sup>28</sup>

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<sup>27</sup> The Ad Hoc Committee on the Agency's Inspectors decided to omit a provision from the Inspectors Document which would have required a state to warn Agency inspectors of any danger of radiation or radioactive contamination that might be encountered during their inspections. The Committee felt that such a provision would raise difficult questions of possible state liability to the Agency or its inspectors, and should consequently not be dealt with in the Inspectors Document. However, the Committee recommended that the parties concerned should include appropriate provisions on this subject in the project and safeguards agreements.

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<sup>28</sup> Under art. I of the Treaty for the Prohibition

While these agreements are not intended to prevent nuclear weapons states from increasing their stockpiles of atomic arms, they aim to prevent the acquisition or manufacture of atomic weapons by non-nuclear weapons states. Thus, once the nonnuclear weapons states adhere to these treaties and accept the application of IAEA safeguards to all of their nuclear materials, equipment, and facilities, the subsequent temptation for diversion may assume significant dimension, especially if countries are involved in a major armed conflict or face a serious military confrontation.

The final test, however, of the IAEA provisions for the application of sanctions

and the settlement of disputes would come only as a result of the direct application of Agency safeguards to atomic military stockpiles of nuclear weapons states in an agreement on disarmament or the reduction or control of armaments. If such a situation eventually develops, it is expected that any nuclear weapons state will insist upon additional safeguards and sanctions commensurate with the degree of effect that diversion by another state would have on its military posture and overall security. At that time, if the IAEA is to assume major control responsibilities, its procedures will have to be backed up by an effective world organization with full authority and actual ability to use force, if necessary, against a recalcitrant state.

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tion of Nuclear Weapons in Latin America (also known as the Tlatelolco Treaty) Feb. 14, 1967, reproduced in 6 INT'L LEGAL MATERIALS 521 (1967), the contracting parties undertake to use the nuclear materials and facilities, which are under their jurisdiction, exclusively for peaceful purposes, and to prohibit and prevent in their respective territories:

(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the parties themselves, directly or indirectly, on behalf of anyone else or in any other way; and

(b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the

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parties themselves, by anyone on their behalf or in any other way.

The contracting parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

Under art. 13 of the same Treaty the parties also undertake to negotiate multilateral or bilateral agreements with the IAEA for the application of its safeguards to their nuclear activities. For a general discussion of the Treaty provisions, see G. ROBLES, *EL TRATADO DE TLATELOLCO* (1968). See also Robinson, *The Treaty of Tlatelolco and the United States*, 64 AM. J. INT'L L. 282 (1970).